the presumptive one foot of usable space for the attachment (or any other applicable space presumption). As previously discussed in Section III.A.3, entities that lease dark fibers should be treated as separate attachers if they lease dark fiber in an overlashed facility, or in an original attachment that has been overlashed with another facility, where the overlashed facility is not treated by the Commission as a separate attachment for rate purposes. In such circumstances, the original attacher could repeatedly overlash its facility leasing dark fibers in the original and the overlashed facilities to other entities with the original and overlashed facilities still being considered a single attachment for rate purposes even though the overlashed facilities place significant additional burdens on the pole. Considering an entity that leases dark fiber in such situations as a separate attacher would avoid such abuse.[35]

IV. PROPOSED CONDUIT METHODOLOGY

The Commission proposes to follow the same historical-cost rate-making approach for electric conduit under Section 224(e) that it proposes for pole attachments. NPRM ¶¶ 36-41. The particular adaptation proposed by the Commission is the same formulaic approach as that proposed for electric conduit in the March 1997 Pole Attachment Notice, which had been initially developed for telephone conduit. NPRM ¶¶ 38-40. As in the March 1997 Pole Attachment Notice, the Commission recognizes, however, that it has limited experience in resolving disputes relating to electric conduit and that there are "inherent differences in the

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[35] Ohio Edison believes, however, that a better solution would be to treat the overlashed facilities of the original attacher as separate attachments regardless of whether the original attacher leases dark fiber to a third party.

safety aspects" of cable owned or used by cable operators and telecommunications carriers and conduit owned or used by electric utilities. NPRM ¶ 36. The Commission is also cognizant that its proposed rate formula "does not appear to take such differences into consideration," and it seeks comment on the "physical limitations" of electric conduit systems that would affect the rate for such facilities. Id.

The Commission is correct to recognize that the inherent characteristics of electric conduit may require the use of different rate setting principles. The characteristics of electric conduit differ from both telephone conduit and electric poles such that an entirely different rate setting methodology should be used for electric conduit. Even assuming that the Commission were to decide not to adopt a forward-looking rate methodology for poles, it should clearly do so for electric conduit. As explained in Ohio Edison's June 26, 1997, comments filed with respect to the March 1997 Pole Attachment Notice, electric conduit is an unique resource that cannot be readily duplicated. It is used by electric utilities mostly in urban areas where poles cannot be used or where cable cannot be buried directly in the ground.

Moreover, many existing electric conduit systems were constructed years ago and are mostly depreciated. Therefore, a huge disparity often exists between the book value of the conduit and its replacement value. In fact, the book value for some conduit systems built decades ago is negative. Additionally, today's cost to construct even a modest conduit system in an urban area is a major undertaking and expense. As discussed in Ohio Edison's June 26, 1997, comments, the cost for Ohio Edison to construct new conduit systems today ranges from $30 per foot in suburban areas and well over $200 per foot in urban areas.

Therefore, a rate based on the historical cost of existing conduit systems would be confiscatory and could greatly disadvantage electric utility companies. A utility could be forced to provide access to its conduit at prices far below the replacements costs at which it may later be required to build new conduit necessary to perform its core business function of providing electrical service. Moreover, such a historical-cost based rate system would be counterproductive as discussed in Section II.B of these comments above. As long as the Commission requires Ohio Edison and similarly situated utilities to make conduit available to providers of telecommunication services at unrealistically low historical-cost levels, such providers will have no incentive to pursue other feasible alternatives even if those alternatives are less costly than the forward-looking replacement costs for conduits. By the same token, Ohio Edison and similarly situated utilities will have no incentive to add new conduit capacity to their systems, for they will simply lose more money based on the Commission's historical-cost rates.

Accordingly, the Commission must adopt a forward-looking rate methodology for electric conduit in order to avoid a misallocation of resources contrary to fundamental economic principles. As the Commission itself has recognized, a rate methodology based on forward-looking costs sends the "correct signals for entry, investment and innovation;" in a dynamic, competitive market, "firms take action based not on embedded costs, but on . . . forward-looking economic costs."[36] Further, because of the large variations in the costs of conduit systems for highly urbanized areas and other less crowded areas, the Commission should allow forward-looking

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[36] Universal Service Order, ¶ 224; Interconnection Order, ¶ 620.

replacement costs to be determined on a local or project basis, such as for downtown urban areas, city residential areas, or suburban areas, as opposed to a system-wide basis.

Ohio Edison incorporates by reference and relies upon the entirety of its June 26, 1997, comments with respect to the March 1997 Pole Attachment Notice concerning the Commission's proposed historical-cost methodology for conduit under Section 224(d) of the Act. Ohio Edison wishes to emphasize, however, the following points in addition to those already emphasized above:

- First, the Commission's proposed half-duct methodology, which emanates from rate cases involving telephone conduit, cannot be applied to electric conduit because electric power supply cables and communication company cables cannot share the same duct even if interduct is installed in the duct. In addition to prohibitions contained in the NESC against such joint use, practical considerations preclude power supply cables and communication cables from sharing the same duct. For example, the failure of a power supply cable by arcing (a common failure mode) would in all likelihood destroy the communication cable. Also, pulling the much larger, heavier electric cable through a duct (necessitated by a cable failure) would likely destroy the smaller communications cable even if it were separated from the power supply cable by interduct.[37]

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[37] MCI in its Reply Comments for the March 1997 Pole Attachment Notice argues that electric cable can share duct with communications cable and that it has on occasion negotiated such sharing with electric companies. MCI Reply Comments at 42-43. However, the practical considerations discussed above preclude the Commission from adopting a half duct

- Second, electric conduit vaults and manholes are crowded, confined quarters containing extensive high voltage electric equipment and circuits which can pose grave potential dangers to untrained communication workers. Not only are important safety and reliability considerations involved, but the presence of non-utility personnel in electric vaults and manholes -- even if properly trained -- require special procedures and precautions that translate directly into additional costs borne by the utility.[38]

- Third, any methodology adopted by the Commission (whether based on forward-looking or historical costs) should allow the applicable costs to be determined on a local or project basis, such as for downtown urban areas, city residential areas, or suburban areas, as opposed to a system-wide basis. Such an approach is necessary because of the large variations in the costs of conduit systems for highly urbanized areas and other less crowded areas and the fact that access will inevitably be sought in high-cost urbanized areas.

- Fourth, the Commission's methodology (whether based on forward-looking or historical costs) should expressly recognize that the relevant

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methodology for electric conduit with universal application even assuming that such sharing may be negotiated in certain, limited circumstances.

[38] For example, Ohio Edison needs to know when work is being performed in its manholes or vaults in order to ensure that the switching of circuits (which could cause failures that would endanger the workers) will not occur while workers are in the manhole or vault. Also, radio contact needs to be maintained with the workers in order to advise them to leave the manhole or vault for their safety in the event emergency switching of the circuits is required. This coordination required to protect even trained persons working on communication cables in electric vaults requires utility personnel time which translates into costs.

costs for determining rates under Section 224(e) for access to electric utility conduit include the material and installation costs for the entire conduit system and not just the conduit duct. The conduit system includes the duct, the concrete and other materials surrounding the duct, manholes and vaults for access to the duct, plus any local franchise fees.

- Fifth, the Commission should confirm that the first telecommunications company to install cable in a spare duct should be required to install interduct as part of its make ready costs with subsequent telecommunications companies that utilize the duct paying the installing company their pro rata share for installing the interduct. Such an approach is analogous to that prescribed by the Commission for a telecommunications company that installs a pole attachment which requires the installation of a new, higher utility pole. In those circumstance, the party making the additional attachment requiring the installation of a taller pole is responsible for the entire cost of installing the new pole as a make ready cost, but it can recover portions of this cost from subsequent attachers benefiting from the increased height of the pole.

V. RIGHTS-OF-WAY

The Commission seeks comment on the degree to which right-of-way access issues will arise and on whether it should either adopt a rate methodology for determining a just and reasonable rate or address right-of-way issues on a case-by-case basis. NPRM ¶ 42-43. Ohio Edison believes that the Commission should address

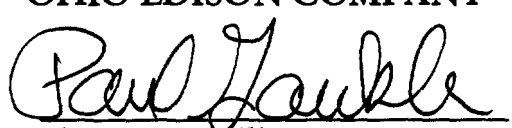
right-of-way issues on a case-by-case basis. As the Commission notes, its experience in addressing issues relating solely to rights-of-way is limited and addressing such issues on a case-by-case basis would allow the Commission to gain experience on these matters. Moreover, most of Ohio Edison's rights-of-way from private owners authorize electric use only and could not be used by telecommunication companies to provide telecommunication services.

VI. CONCLUSION

For the foregoing reasons, the Commission should adopt negotiated, market-based rates for implementing Section 224(e). If it were to adopt a formulaic-rate methodology, the Commission should adopt methodologies based on forward-looking economic costs as set forth in these comments.

Respectfully submitted,

OHIO EDISON COMPANY



Rick C. Giannantonio, Esq.
John F. Hamilton
Ohio Edison Company
76 South Main Street
Akron, Ohio 44308
(330) 384-5893

John H. O'Neill, Jr.
Paul A. Gaukler
Norman J. Fry
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037-1128
(202) 663-8304

Its Attorneys